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| FLIESLER MEYER, LLP FOUR EMBARCADERO CENTER SUITE 400 SAN FRANCISCO, CA 94111 | | | CHEUNG, MARY DA ZHI WANG | |
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| | | | 3621 | |

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/854,163

Applicant(s)

ENG, MAY D.

Examiner

Mary Cheung

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Kew

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-105 is/are pending in the application.
- 4a) Of the above claim(s) 48-105 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Status of the Claims

1. This action is in response to the amendment filed on March 29, 2004. Claims 1-105 are pending. Claims 1-2, 4-7, 19-20, 22, 26-27, 29, 33-34 and 36 are amended. Claims 40-105 are newly added.
2. The newly added claims 48-105 comprise new matters, such as the multi-tier system and concurrent access, that require different and separate class and subclass search (i.e. 707/1-10); thus, **claims 48-105 are withdrawn from consideration.**

Response to Arguments

3. Applicant's arguments filed March 29, 2004 have been fully considered but they are not persuasive.

Applicant argues that Rivera et al. (U. S. Patent 6,056,786) fails to teach counting users of the licensed software program at a plurality of nodes, but instead the counting is done at the server 62 only. Examiner respectfully disagrees because server 62 is just one of the example of the plurality of network nodes. At column 5 lines 23-51, Rivera indicates that there are plurality of network computers.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 1, 5-8, 10, 13-14, 17, 19, 23, 25-26, 30, 32-33, 37 and 39-47 are rejected under 35 U.S.C. 102(b) as being anticipated by Rivera et al., U. S. Patent 6,056,786.

As to claims 1 and 40-41, Rivera teaches a machine-implemented method for managing software licenses in a distributed computer network having a maximum number of said licenses for use with a licensed software program, comprising the steps of (abstract and column 3 lines 31-35 and column 8 lines 35-43; *specifically, "a maximum number of said license for use" is interpreted as the number of client licenses in Rivera's teaching*):

- a) Counting users of said licensed software program at a plurality of nodes of said computer network to obtain counts of software licenses in use by each node (column 3 lines 31-35 and column 6 lines 13-16, 51-57 and column 8 lines 21-23 and Figs. 3, 5B);
- b) Transmitting said counts to a master node (*item 64 in Fig. 3*) of said computer network (column 6 lines 13-16, 51-57 and Fig. 3);
- c) Calculating a total number of software users on said computer network, said calculating step uses said counts (column 6 lines 51-57);
- d) Evaluating a license allocation condition using said total number of users to obtain a license allocation result (column 6 lines 51-57 and column 8 lines 35-43 and Figs. 3, 5B);
- e) Responding said license allocation result if said license allocation condition is met (column 8 lines 35-43; *specifically, "said license allocation condition is met"*)

is interpreted as is the number of the software users exceed the number of client licenses).

As to claim 5, Rivera further teaches wherein:

- a) Said condition is an warning condition (column 8 lines 39-66),
- b) Said responding step comprises the step of displaying a warning message (column 8 lines 39-66 and Fig. 1).

As to claim 6, Rivera further teaches wherein:

- a) Said condition is an information condition (column 8 lines 39-66),
- b) Said responding step comprises the step of displaying an information message (column 8 lines 39-66 and Fig. 1).

As to claims 7, 23, 30 and 37, Rivera further teaches wherein:

- a) Said condition is a threshold value (column 8 lines 35-43; *specifically, "a threshold value" is interpreted as the number of client licenses*),
- b) Said evaluating step compares said total users to said threshold value (column 8 lines 35-43),
- c) Said condition is met if said total users is at least equal to said threshold (column 8 lines 35-43).

As to claim 8, Rivera further teaches wherein:

- a) Said evaluating step compares said total users to said maximum number of licenses (column 8 lines 35-43),
- b) Said condition is met if said total users comprises at least a minimum percentage of said maximum number of licenses (column 8 lines 35-43;

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specifically, "a minimum percentage of said maximum number of licenses" corresponds to 100% of the number of client licenses or exceed the number of the client licenses in Rivera's teaching).

As to claim 10, Rivera teaches said threshold is 100 percent of said maximum number of licenses (column 8 lines 35-43).

As to claim 13, Rivera teaches said threshold is at least equal to said maximum number of licenses (column 8 lines 35-43).

As to claim 14, said transmitting step transmits said counts asynchronously is taught by Rivera as transmitting said counts whenever the license usage occurs (column 6 lines 13-16, 51-57 and Fig. 3-4).

As to claims 17, 25, 32 and 39, Rivera further teaches repeating said calculating and evaluating steps periodically (column 7 lines 3-64 and Figs. 5A-5B).

As to claims 19 and 42-43, Rivera teaches an apparatus comprising:

- a) A memory, said memory adapted to store program code (column 9 lines 16-18 and Fig. 1);
- b) A processor in communication with said memory, said program code capable of programming said processor to perform a method for managing software licenses in a computer network having a maximum number of said licenses for use with a licensed software program, the method comprising the steps of (abstract and column 3 lines 31-35 and column 8 lines 35-43 and Fig. 1;
specifically, "a maximum number of said license for use" is interpreted as the number of client licenses in Rivera's teaching):

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- i) Counting users of said licensed software program at a plurality of nodes of said computer network to obtain counts of software licenses in use by each node (column 3 lines 31-35 and column 6 lines 13-16, 51-57 and column 8 lines 21-23 and Figs. 3, 5B);
- ii) Transmitting said counts to a master node (*item 64 in Fig. 3*) of said computer network (column 6 lines 13-16, 51-57 and Fig. 3);
- iii) Calculating a total number of software users on said computer network, said calculating step uses said counts (column 6 lines 51-57);
- iv) Evaluating a license allocation condition using said total number of users to obtain a license allocation result (column 6 lines 51-57 and column 8 lines 35-43 and Figs. 3, 5B);
- v) Responding said license allocation result if said license allocation condition is met (column 8 lines 35-43; *specifically, "said license allocation condition is met" is interpreted as is the number of the software users exceed the number of client licenses*).

As to claims 26 and 44-45, Rivera teaches an apparatus for managing software licenses in a distributed computer network having a maximum number of said licenses for use with a licensed software program, comprising (abstract and column 3 lines 31-35 and column 8 lines 35-43; *specifically, "a maximum number of said license for use" is interpreted as the number of client licenses in Rivera's teaching*):

- a) Means for counting users of said licensed software program at a plurality of nodes of said computer network to obtain counts of software licenses in use by

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each node (column 3 lines 31-35 and column 6 lines 13-16, 51-57 and column 8 lines 21-23 and Figs. 3, 5B);

b) Means for transmitting said counts to a master node (*item 64 in Fig. 3*) of said computer network (column 6 lines 13-16, 51-57 and Fig. 3);

c) Means for calculating a total number of software users on said computer network, said calculating step uses said counts (column 6 lines 51-57);

d) Means for evaluating a license allocation condition using said total number of users to obtain a license allocation result (column 6 lines 51-57 and column 8 lines 35-43 and Figs. 3, 5B);

e) Means for responding said license allocation result if said license allocation condition is met (column 8 lines 35-43; *specifically, "said license allocation condition is met" is interpreted as is the number of the software users exceed the number of client licenses*).

As to claims 33 and 46-47, Rivera teaches a processor readable storage medium comprising (Fig. 1):

a) Processor readable program code embodied on said processor readable storage medium, said processor readable program code for programming a processor to perform a method for managing software licenses in a distributed computer network having a maximum number of said licenses for use with a licensed software program, the method comprising the steps of (abstract and column 3 lines 31-35 and column 8 lines 35-43 and column 9 lines 16-18 and

Fig. 1; specifically, *“a maximum number of said license for use” is interpreted as the number of client licenses in Rivera’s teaching*):

- i) Counting users of said licensed software program at a plurality of nodes of said computer network to obtain counts of software licenses in use by each node (column 3 lines 31-35 and column 6 lines 13-16, 51-57 and column 8 lines 21-23 and Figs. 3, 5B);
- ii) Transmitting said counts to a master node (*item 64 in Fig. 3*) of said computer network (column 6 lines 13-16, 51-57 and Fig. 3);
- iii) Calculating a total number of software users on said computer network, said calculating step uses said counts (column 6 lines 51-57);
- iv) Evaluating a license allocation condition using said total number of users to obtain a license allocation result (column 6 lines 51-57 and column 8 lines 35-43 and Figs. 3, 5B);
- v) Responding said license allocation result if said license allocation condition is met (column 8 lines 35-43; specifically, *“said license allocation condition is met” is interpreted as is the number of the software users exceed the number of client licenses*).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. Claims 2, 9, 11-12, 15-16, 18, 20, 24, 27, 31, 34 and 38 are rejected under 35

U.S.C. 103(a) as being unpatentable over Rivera et al., U. S. Patent 6,056,786.

As to claims 2, 20, 27 and 34, Rivera teaches the steps of:

a) Performing a sanity scan on at least one subset of said plurality of nodes

(column 6 lines 13-27 and column 7 line 3 – column 9 line 7 and Figs. 3, 5A-5B;

specifically, “a sanity scan” is interpreted as the monitoring routine);

b) Generating a scan result message, transmitting said scan result message

(column 8 line 35 – column 9 line 7 Figs. 3, 5A-5B; *specifically, the scan result*

message is interpreted as the message indicates there are insufficient number of

licenses for the users).

Rivera does not explicitly teach said transmitting step transmits said scan result message with at least one said counts. However, Rivera teaches if it is determined there are insufficient number of licenses for the users, checking with the users at a later date for determining if the requisite additional licenses have been purchased (column 8 line 35 – column 9 line 7) . It would have been obvious to one of ordinary skill in the art to allow the transmitting step in Rivera’s teaching to include transmitting the scan result message along with at least one said counts because this would allow the network for better determining the number of licenses need to be purchased by the users.

As to claims 9 and 11-12, Rivera teaches said threshold is 100 percent of said maximum number of licenses (column 8 lines 35-43). Rivera does not specifically teach said threshold is 110% or 90% of said maximum number of licenses, or said threshold is at least 5 licenses greater than said maximum number of licenses. However, Rivera

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teaches sending warning messages if the number of the users exceed to the number of client licenses, and allowing the users to continue the license usages during a predetermined grace period (column 8 line 39 – column 9 line 7). It would have been obvious to one of ordinary skill in the art to allow the threshold in Rivera's teaching to be set to different values so that the users can be better notified based on various usage conditions, such as approaching or exceeding the maximum number of licenses.

As to claims 15, 24, 31 and 38, Rivera further teaches repeating said performing step periodically (column 7 lines 3-30).

As to claims 16 and 18, Rivera further teaches said period is a designated period such as fifteen minutes (column 3-30). Rivera does not explicitly teach said period is two minutes or five minutes. It would have been obvious to one of ordinary skill in the art to allow the period in Rivera's teaching to be set at various time intervals (i.e. two minutes, five minutes) based on individual specification so that the number of users can be more efficiently and accurately counted.

8. Claims 3-4, 21-22, 28-29 and 35-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rivera et al., U. S. Patent 6,056,786 in view of Bains et al., U. S. Patent 5,579,222.

As to claims 3, 21, 28 and 35, Rivera further teaches deallocating any licenses allocated to users of any of said nodes if the users do not purchase the requisite additional licenses within a predetermined grace period (column 8 line 48 – column 9 line 7).

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Rivera does not specifically teach checking whether one of said scan result message has been received from all of said nodes; and deallocating any licenses to users of any of said nodes from which a scan result message has not been received. However, this matter is taught by Bains as checking the connection between the nodes and the license server, and no license is granted to said nodes if said nodes lost connection from the license server or if said nodes do not entitle to temporary user licenses (column 8 lines 1-10). It would have been obvious to one of ordinary skill in the art at the time the invention was made to allow Rivera's teaching to include the features of checking the message responses from all of said nodes, and deallocating any licenses to users of any of said nodes from which the scan result message has not been received because this would ensure the licenses are granted only to the recognized nodes; thus, the licenses would be better protected from unauthorized/unrecognized usages.

As to claims 4, 22, 29 and 36, Rivera further teaches wherein:

- a) Said condition is the number the users exceeds number of client licenses (column 8 lines 39-43),
- b) Said responding step comprises the steps of: measuring a license lockout grace period; and initiating a license lockout if said grace period is exhausted (column 8 line 39 – column 9 line 7).

Rivera does not explicitly teach said condition is an error condition. However, Bains teaches evaluating a license allocation condition, and said condition including an error condition (column 8 lines 53-56). It would have been obvious to one of ordinary

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skill in the art at the time the invention was made to allow the license allocation condition in Rivera' teaching to include an error condition for better protecting the licenses from illegal usages.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Inquire

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary Cheung whose telephone number is (703)-305-0084. The examiner can normally be reached on Monday – Thursday from 10:00 AM to 7:30 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell, can be reached on (703) 305-9768.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

The fax phone number for the organization where this application or proceedings is assigned are as follows:

(703) 872-9306 (Official Communications; including After Final
Communications labeled "BOX AF")

(703) 746-5619 (Draft Communications)

Hand delivered responses should be brought to Crystal Plaza Two, Room 1B03.

Mary Cheung
Patent Examiner
Art Unit 3621
September 2, 2004



JAMES P. TRAMMELL
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